

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated October 19, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-3, 5-6 and 8-17 are pending in the Application. Claims 4 and 7 are previously canceled without prejudice. Claims 1 and 11 are independent claims.

In the Office Action, claims 1-14 are rejected under 35 U.S.C. §103(a) over European Patent Publication No. WO 01/15582 to Kraan ("Kraan") in view of U.S. Patent No. 6,182,554 to Beaulieu ("Beaulieu"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-3, 5-6 and 8-17 are allowable over Kraan in view of Beaulieu for at least the following reasons.

As a first point, in the Office Action the status of claims 15-17 is indicated as rejected in the Office Action Summary (see, Office Action Summary, numbered line "6"), yet the Detailed Action of the Office Action provides no indication of the basis for the rejection of claims 15-17. Accordingly, it is respectfully requested that should this rejection of claims 15-17 be maintained in a further Office Action, that the Office Action be rendered non-final to provide the Applicant with an opportunity to respond.

While Kraan does show protrusions, it does not teach, disclose or suggest that the protrusions are arranged in rows and columns that radiate diagonally outward from a diameter of the circular-shaped upper wall.

Similarly, Beaulieu shows use of protrusions but again does not teach, disclose or suggest that the protrusions are arranged in rows and columns that radiate diagonally outward from a diameter of the circular-shaped upper wall.

It is respectfully submitted that the beverage making device of claim 1 is not anticipated or made obvious by the teachings of Kraan in view of Beaulieu. For example, Kraan in view of Beaulieu does not teach, disclose or suggest, a beverage making device that amongst other patentable elements, comprises (illustrative emphasis added) "a substantial portion of the surface of the circular-shaped upper wall is provided with protrusions having a height of more than 0.5 mm, the distance between every two neighboring protrusions being less than 12 mm, wherein side walls of the protrusions joining the surface of the upper wall are substantially straight, wherein a surface of the protrusions furthest from the surface of the circular-shaped upper wall is substantially straight, wherein the side walls of the protrusions connect to the surface of the protrusions furthest from the surface of the circular-shaped upper wall; wherein the protrusions are arranged in rows and columns that each have a plurality of protrusions that radiate diagonally outward from a diameter of the circular-shaped upper wall, and wherein any of the rows and columns that pass through the diameter of the circular-shaped upper wall have a protrusion positioned on the diameter of the circular-shaped upper wall" as recited in claim 1, and as similarly recited in claim 11.

Based on the foregoing, the Applicant respectfully submits that independent claims 1 and 11 are patentable over Kraan in view of Beaulieu and notice to this effect is earnestly solicited. Claims 2-3, 5-6, 8-10 and 12-17 respectively depend from one of claims 1 and 11 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

For example, while the Office Action takes a position that "it would have been an obvious matter of design choice to construct the protrusions of the claimed height and distance therebetween, since applicant has not disclosed that such heights and distances solves any stated problem or is for

any particular purpose and it appears that the invention would perform equally well with that disclosed in Kraan (see, Office Action, page 3). This position is respectfully traversed.

It is respectfully submitted that it was the Applicant that recognized sticking of the pad to the upper wall may be avoided by maintaining a relationship between the height of the protrusions and the spacing therebetween. The Applicant further recognized that other beverage makers including the beverage maker disclosed in Kraan has protrusions (see, present application, page 1, lines 9-25 which discusses Kraan). As further recognized by Applicant, "[i]t was found in practice that the pad [of Kraan] tends to stick to the hinging upper wall in the disclosed device, despite the presence of the protrusions." (See, present application, page 2, lines 23-26.) It is respectfully submitted that it was the Applicant that recognized that "the tendency to stick can be decreased when certain dimensions of the protrusions are applied" (see, present application, page 2, lines 27-28). The Applicant further recognized that "the higher the protrusions, the greater the distance between the protrusions can be." (See, present application, page 3, lines 3-4.) Hence, it is respectfully submitted that the Applicant has identified a problem that existed in prior beverage makers including Kraan, namely sticking of the pad to the upper wall of the beverage maker, and has discovered a relationship between the height of the protrusions and the spacing between the protrusions that is suited for the particular purpose of stopping sticking of the pad to the upper wall of the beverage maker.

Certainly Kraan and Beaulieu can not be said to teach, disclose or suggest this relationship between the height of the protrusions and the spacing between the protrusions.

Accordingly, it is respectfully submitted that the beverage making device of claim 5 is not anticipated or made obvious by the teachings of Kraan in view of Beaulieu. For example, Kraan in view of Beaulieu does not teach, disclose or suggest, a beverage making device that amongst other

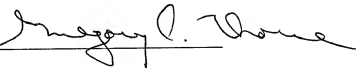
patentable elements, comprises "the distance between every two neighboring protrusions is less than eight times the height of the protrusions" as recited in claim 5, and as similarly recited in claim 17.

Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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